

UNSAFE TRANSIT

Asylum and detention conditions of persons in need of international protection in the northern part of Cyprus

January 2018



Refugee Rights Association (RRA) was established in 2009 to work against the shortcomings and violations regarding the right to asylum in the northern part of Cyprus and to provide legal and social support for refugees. Over time, the organisation extended its activities to include efforts to combat trafficking and racism.

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Action for Equality, Support, Antiracism (KISA) was established in 1998, and its action is focused on the fields of Migration, Asylum, Racism, Discrimination and Trafficking in Human Beings. KISA's vision is the promotion of an all-inclusive, multi-cultural society, free of racism, xenophobia and discrimination and where, through the interaction and mutual respect of diverse cultures, there will be equality and respect for the rights of all, irrespective of race, nationality or ethnicity, colour,

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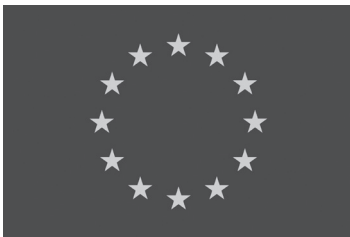
The present report is part of the project **“Human Rights for All!”**, which is funded by the European Union under the Cypriot Civil Society in Action programme and implemented by RRA in partnership with KISA. The overall aim of the three-year project is to combat racism and to ensure that human rights of refugees are respected. Main project activities include trainings on asylum, standards of detention, protection from ill-treatment & torture; thematic reports on human rights of refugees; workshops for refugees on their rights; awareness-raising campaigns on the International Day for the Elimination of Racial Discrimination; panel discussion on migration and asylum policy

in a unified Cyprus; summer volunteer programs and advocate for legal change in the northern part of Cyprus.

The author

Faika Deniz Pasha is an advocate. She holds an undergraduate degree in law, advanced master's in 'European Business Law', a graduate diploma in Economics from the University of Essex, and a master's degree in Refugee Protection and Forced Migration Studies from the University of London, School of Advanced Study. She was entitled to register at the Nicosia Bar Association in the northern part of Cyprus in 2011.

Faika Deniz Pasha has been involved both professionally and voluntarily with the Rights Association since 2009. Since 2016, she has been the project manager of the “Human Rights for All!” Project.



The texts compiled in this publication, including the terminology used are the sole responsibility of the author and the Refugee Rights Association as one of the beneficiaries of the EU funded project “Human Rights for All!”. If reference is made in this report to any “ministries”, “departments”, “authorities”, “officers”, “police”, “port of entry”, “port”, “airport”, “central prison”, “court”, “law” and “criminal code” in the northern part of Cyprus, this is to allow a clear understanding of the administrative structures and legal framework but without any intention to recognize the self-proclaimed “Turkish Republic of Northern Cyprus”. In no way can the content of this publication be attributed to the European Commission. The EU does not recognize the “Turkish Republic of Northern Cyprus” but only the Republic of Cyprus as its member state. According to article 1(3) of Council Regulation 389/2006 “the granting of such assistance shall not imply recognition of any public authority in the areas other than the Government of the Republic of Cyprus”.

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Methodology

This report is firmly based on RRA's on-going extensive involvement in the field and accumulated knowledge and data as the leading specialized legal and social service provider for asylum seekers and refugees. The primary data of this report is based on records kept by RRA while working in the field throughout the years.

Furthermore, semi-structured interviews were conducted with 'officers' working at the 'ports of entry' and the 'central prison' for the purposes of this report in 2016 and 2017. The interviews were conducted using the 'grounded theory approach' and were initiated with a broad variety of questions derived from the main topics listed in the "aspects of immigration detention to examine" section of the 'Practical Manual' produced jointly by the UN Refugee Agency (UNHCR), the Association for the Prevention of Torture (APT), and the International Detention Coalition (IDC)¹. Field notes were also taken during the visits to the 'ports of entry' in order to support the overall analysis and include data that did not come up during the interviews.

Additionally, desk research was conducted on the domestic legal framework including international laws and policies applicable in relation to the detention of persons in need of international protection as well as a relevant case-law.

¹ UN High Commissioner for Refugees, Association for the Prevention of Torture, the International Detention Coalition, 'Monitoring Immigration Detention: Practical Manual' (UNHCR, APT, IDC, 2014) [hereinafter "UNHCR, APT, IDC, 2014"].

Introduction

The report seeks to elaborate on the state of the domestic legal framework and practice relating to the detention and imprisonment of persons seeking international protection in the light of international and European standards. Although the report does not specifically cover the situation of persons found not in need of international protection or other migrants, many standards stated herein may also apply to them *mutatis mutandis*.

Persons with international protection needs are detained and imprisoned for various reasons in the northern part of Cyprus. Categories of persons with international protection needs who are systematically detained in the northern part of Cyprus include:

- Administrative detention of persons who arrive in the northern part of Cyprus who are not permitted to enter at the border-crossing points at 'airports' and 'seaports' for various reasons; this form of detention is particularly problematic as it is implemented almost automatically, irrespective of gender, age, or vulnerability;
- Administrative detention of persons at 'police' stations for deportation who have overstayed their visa or, have ended their prison sentence after being convicted for criminal offences.
- Pre-trial detention at 'police' stations and the 'central prison' of persons who enter irregularly during 'police' investigations and 'criminal court' proceedings on the basis of court decisions.
- Imprisonment of persons who enter irregularly, following a conviction, at the 'central prison'.

To start with, it is important to underline that the 'administration' in the northern part of Cyprus has not yet taken responsibility for processing asylum claims. Domestic legislation does not differentiate between persons in need of international protection or other migrants. However, UNHCR's mandate covers the northern part of Cyprus and thus the organisation has the responsibility to provide international protection and assistance to those in need.² However, because there are no established procedures, many people can easily fall out of the system.

Although there is no domestic legislation specific to the situation of persons in need of international protection, international human rights obligations, to which Turkish Cypriot 'authorities' unilaterally bind themselves, should, in theory, be directly applicable. These obligations are also included in a range of international treaties that are considered to be part of the domestic legal framework, such as:

² UNHCR Cyprus 'The UN Refugee Agency Cyprus' (UNHCR Cyprus, 2014), p.7.

- Convention Relating to the Status of Refugees;³
- European Convention on Human Rights;⁴
- International Covenant on Civil and Political Rights;⁵
- Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment;⁶
- Convention on the Rights of the Child (CRC)⁷.

These treaties cover a broad range of rights and freedoms relevant to detention and imprisonment, which will be discussed in the next pages.

The principle of *non-refoulement* is said to be the cornerstone of refugee protection.⁸ It stems from the idea that states should not return persons to countries where they may be persecuted.⁹ As the detention of people with international protection needs is usually ordered in the context of deportation or expulsion, the principle of *non-refoulement* will also be discussed where relevant.

3 Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137

4 Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14 (adopted on 4 November 1950, entered into force 3 September 1953) ETS 5 [hereinafter "ECHR"].

5 International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, [hereinafter: "ICCPR"].

6 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984 entered into force 26 June 1987) 1465 UNTS 85, [hereinafter: "CAT"].

7 Convention on the Rights of the Child, (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, [hereinafter: "CRC"].

8 Guy S. Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (3. ed., Oxford University Press, 2006) p. 2.

9 *ibid.*

1. Legal Framework

1.1 Detention and *refoulement* of persons in need of international protection under the domestic legal framework

1.1.1. 'aliens and immigration law' (CAP 105)¹⁰

CAP 105, is the main instrument dealing with immigration and regulates inter alia, border control, detention, expulsion, and residence permits. It should be noted that the law predates the 'constitution' as well as all of the international human rights and refugee treaties and conventions that became part of the domestic legal framework. Thus, it is not aligned with human rights and refugee rights obligations of the administration to which it has bound itself unilaterally. The detention of foreigners¹¹ for the purpose of deportation is regulated under the subsequently amended 'aliens and immigration law' (CAP 105).

The 'law' provides that a person can be detained if declared a "prohibited immigrant". It provides 13 instances under which a person may be declared a "prohibited immigrant", listed under Article 6(1). The ones that are most commonly applied to asylum seekers and refugees are the following:

- any person who is convicted of an offence for which a sentence for imprisonment has been passed¹²;
- any person who enters or resides in the country contrary to any prohibition, condition, restriction, or limitation¹³;
- any person who was deported from the northern part of Cyprus¹⁴;
- any foreigner who wishes to enter as an immigrant, but does not have in his or her possession a granted immigration permit¹⁵;
- any persons who suffers from contagious or infectious disease and is a danger to public health or does not comply with the regulations in the interest of public health¹⁶.

Under CAP 105, the administrative detention of persons who have been issued with denial of entry decisions or deportation orders is allowed under Articles 13 and 14. Article 13, which applies to decisions relating to the prohibition of entry to prohibited immigrants, provides for a maximum period of 8 days of administrative detention after which detention is subject to judicial review, which may lead to the court ordering an extension of the detention. Article 14 provides that deportation orders along with detention orders can be issued against

10 'aliens and immigration law, CAP 105 (1959 edition) adopted on 19 June 1952, as amended by laws 21/1982; 44/1989, 32/2004, 38/2006, 28/2007; 50/2007; 31/2008; 55/2011; 62/2014 and 44/2016'.

11 'Foreigners' are defined under 'CAP 105' as persons that are neither citizens nor native Cypriots.

12 Article 6(1)(d).

13 Article 6(1)(k).

14 Article 6(1)(i).

15 Article 6(1)(l).

16 Article 6(1)(c).

persons who overstay their visa or who are considered to be a “prohibited immigrant”, for an indefinite period. There is no provision for a maximum period of detention and no provisions on judicial review. In practice, detention and deportation orders are issued under Article 14 in almost all cases. However, the ‘constitutional’ provisions, in relation to challenging such decisions with a recourse or a habeas corpus mentioned above, still apply.

Unauthorized entry and/or stay are prohibited under Articles 12 and 19 of CAP 105 and they are punishable by imprisonment and/or a fine under these articles. During the criminalization process, people in need of international protection are usually detained at ‘police’ stations and/or the ‘central prison’ alongside people accused with or convicted of criminal offences and are not automatically given access to available asylum procedures. In some cases, detention and deportation orders are immediately issued against them and following detention in ‘police’ stations, they are deported based on these orders.

RRA has observed that, in 2016, there were some cases in which people who claimed to be in need of international protection, who had entered the northern part of Cyprus irregularly, were not prosecuted, but instead, detention and deportation orders were issued against them immediately and they were returned to where they were last present, which was usually Turkey. For example, this procedure was implemented in the case of a group of 23 Syrians who had entered via an unauthorised port, 3 Syrians, and 2 Iranians who used fraudulent travel documents in 2016. The same procedure was followed in 2015 for 38 Palestinians from Syria who trespassed into a prohibited military zone and entered the northern part of Cyprus irregularly as well as for 9 Syrians that entered the northern part of Cyprus irregularly via sea.

1.1.2. ‘criminal code’ (CAP 154)¹⁷

The ‘criminal code’ provides sentences for personation in general¹⁸ and personation of a person named in a certificate.¹⁹ Persons in need of international protection are often arrested, charged, and convicted for these types of crimes. During the criminalization process, they are almost always detained on the basis of pre-trial detention at ‘police’ stations and/or the ‘central prison’ alongside people convicted of other criminal offences. They are not automatically given access to available asylum procedures.

1.1.3 ‘prohibited military zones law’ (5/1979)²⁰ & ‘military crimes and punishments law’ (29/1983)²¹

Under Article 4 of the ‘prohibited military zones law’, ‘military courts’ have the jurisdiction to hear cases about and impose penalties on anyone that enters without authorization, secretly, or fraudulently into prohibited military zones. Under Article 20 of the ‘military crimes and punishments law’, Secretly, fraudulently, or deceptively

17 ‘criminal code, CAP 154 (1959 edition) adopted on 1 January 1929, as amended by ‘laws’ 3/1962, 43/1963, 15/1972, 20/1974, 31/1975, 6/1983, 22/1989, 64/1989, 11/1997, 20/2004,41/2007; 20/2014 and 45/2014’.

18 Article 360.

19 Article 362.

20 ‘prohibited military zones law, No. 5/1979, enacted: 17 May 1979’.

21 ‘military crimes and punishments law, No. 29/1983, enacted: 19 April 1983, as amended by Laws No. 34/1995; 50/2006 and 8/2009’.

entering prohibited zones designated by the military (which are explicitly indicated by written notices and signs) is punishable with up to three years of imprisonment. Entering military zones, where a special permit is required to enter, without permission or against the conditions of the permission granted, is punishable with up to two years imprisonment.

In order to be able to access the established national asylum procedures in the Republic of Cyprus, exercising its jurisdiction in the southern part of the island, persons seeking international protection who arrive in the northern part should be able to present themselves to the authorities of the Republic of Cyprus posted at the official crossing points along the Green Line. However, due to the lack of knowledge and fear of being arrested and/or returned back to their points of departure by the police on either side of the island, people in need of international protection often try to cross the Green Line irregularly. Less often, asylum seekers in the Republic of Cyprus try entering the northern part in this way, especially in cases where there are legal and/or practical barriers for them to be reunited with their families in the Republic of Cyprus, in order to reach their families who are usually in Turkey. In 2016, RRA identified 1 person in detention who was arrested on this ground. In 2015, RRA identified 50 persons arrested on this ground; while 38 were immediately returned to the Republic of Cyprus from where they came, 12 were detained in a 'police' station and imprisoned in the 'central prison' for periods ranging from 17 to 32 days.

1.2 Procedural safeguards under the 'constitution'²²

Article 16 of the 'constitution' guarantees the right to liberty and security for all. Sub-section 2 lays out the exceptions to this rule. These include, amongst others, "detention of a person after conviction by a competent court"; "arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so"; and, "the arrest or detention of a person to prevent him effecting an unauthorised entry into the territory" and "with a view to deportation or extradition". This article also provides for procedural safeguards for pre-trial detention.²³ It is noted that the article on detention guarantees in the Constitution of Republic of Cyprus, which is very similar to that of the northern part, has been interpreted by the Courts as not to apply in relation to detention for the purpose of

22 'turkish republic of northern cyprus', 'constitution', 'official gazette' [resmi gazete = r.g.], 7 Mayıs 1985, enacted: 5 Mayıs 1985.

23 Arrest should be initiated by a reasoned judicial warrant unless a flagrant offence punishable with death or imprisonment is present with the right to have a close relative informed; the right to be informed at the time of his arrest in a language he/she understands the reasons for his/her arrest and to be allowed to have the services of a lawyer of his/her own choosing; the right to be brought before a judge as soon as is practicable after an arrest, and in any event, no later than twenty-four hours after the arrest; the right to have the court inquire into the grounds of the arrest in a language understandable by the person arrested; the right to either be released as soon as possible, and in any event, no later than three days from such appearance, or where the investigation into the commission of the offence for which he/she has been arrested has not been completed to be remanded in custody from time to time for a period not exceeding eight days at any one time and not exceeding three months in total; the right to appeal the decision to arrest or remand in custody; the right to take legal proceedings to have lawfulness of his detention reviewed speedily by a court; in cases where detention is found to be illegal, the right to be released by the Court; the right to claim compensation by filing an action at the court when detention or arrest does not comply with the provisions of this Article 16 of the 'constitution'.

deportation which is on the basis of an administrative decision.²⁴

Under Article 151(3), lawfulness of detention or imprisonment can be challenged by a Habeas Corpus application to the Supreme Court, sitting as the Court of Appeal. If such an application is successful, the detainee should be immediately released. According to case law, an applicant needs to prove that the detention is illegal and it was realized without the legal authority to do so.²⁵

Additionally, under Article 152, an administrative order for detention can be challenged by recourse to the Supreme Administrative Court. This article provides that:

“The Supreme Administrative Court shall have exclusive jurisdiction to adjudicate finally on a recourse made to it on a complaint that a decision, an act or omission of any organ, authority or person, exercising any executive or administrative authority is contrary to any of the provisions of this Constitution or of any law or is made in excess or abuse of powers vested in such organ or authority or person.”

A recourse can be made within 75 days of the decision or when the act was published or if not published and in the case of an omission when it came to the knowledge of the person making the recourse.²⁶ In case such a recourse succeeds, the ‘court’ has the power to declare an act or decision, partially or as a whole, null or void, or, that an omission ought not to have occurred, or that what had not been done should have been done.²⁷ Administrative detention is often ordered for the purpose of deportation. If a recourse made against such an order is successful, the detention order shall be annulled.

On the other hand, this remedy’s effectiveness in deportation cases is problematic on various levels. To start with, such a recourse challenging detention and deportation orders does not have an automatic suspensive effect; for that, a separate application for an interim order needs to be submitted. According to the experience of RRA, the average length of recourse procedures under Article 152 is one and a half years, whereas an interim order procedure under such recourse varies from a few days to several weeks.²⁸

It is also important to mention that the conditions on the basis of which an interim order may be issued are very difficult to fulfill. For example, if the applicant has a prima facie case, there is a possibility that a judgment will be issued in favour of the applicant on merits, and unless an interim order is issued,

24 Attorney General v Afames (1961) 1 CLR 121; Essa Murad Khaief v Republic (2003) CLR 1521.

25 ‘cemel kurtçebe v. directorate of the central prison through the attorney general, supreme court, case no:3/1991, Judgment of 1 October 1991’.

26 Article 152(3).

27 Article 142(4).

28 In one instance, an application submitted on behalf of an asylum seeker numbered YIM 241/2014 was heard by the court and decided upon the next day, while in another case just a year later, such an application was still pending after one month, when the asylum seeker applicant, a Palestinian living in Syria, agreed to ‘voluntarily return’ to Syria and was subsequently deported via Turkey.

irreparable harm will arise.²⁹

Even in cases where deportation is suspended, detention may not necessarily be suspended. For example, concerning the case of an asylum seeker who was not allowed entry at Ercan 'airport' and was detained for the purposes of deportation, the 'court' accepted suspending deportation, rejecting the arguments under the same ex-parte application to suspend detention.

Additionally, during such a course under Article 152, the jurisdiction of the 'supreme administrative court' is limited to reviewing the legality of the detention and deportation orders in question, on the basis of the facts and circumstances existing at the time they were issued, without going into their merits.³⁰

Furthermore, legal procedures are very complex and expensive for applicants to handle by themselves, considering that the domestic legal framework does not provide legal aid in such cases.

1.3 Obligations under international law that is part of the domestic legal framework

1.3.1 1951 Refugees Convention

The Refugee Convention, as complemented by the 1967 Protocol,³¹ is regarded as "the cornerstone of the international system for the protection of refugees".³² Thus, its provisions are not only relevant for the purposes of this report, to the extent that they are considered to form part of the domestic legal framework, but also because they set the international standards for refugee protection.³³

The Refugee Convention is considered to apply in the domestic legal order. The Refugee Convention was signed and ratified by the United Kingdom without any geographical limitation under Article 1B (1) in 1954.³⁴ Subsequently in 1956, the United Kingdom extended the Refugee Convention's application to its then colony, Cyprus, under Article 40(1) of the Convention.³⁵ Upon independence, the Republic of Cyprus assumed the

29 Article 41 of 'courts law, Law No. 9/76 official gazette [Resmi Gazete = R.G.], 18 April 1976 No. 25, enacted: 17 March 1976, as amended by Laws No. 3/1978, 10/1978, 6/1980, 23/1980, 19/1981, 18/1982, 34/1982, 56/1982, 21/1983, 7/1984, 20/1984, 4/1985,7/1986, 24/1986, 2/1988, 5/1988, 15/1988, 67/1991, 8/1995, 15/1995, 38/1995, 6/1997, 42/2000, 2/2002; 43/2005; 51/2008, 15/2009, 17/2013 and 54/2017'.

30 'salim elibol v. trnc through trnc council of ministers and others, supreme administrative court no. 15/2006, case no. 223/1980, Judgment of 18 March 2008, p. 5'.

31 Protocol Relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267, [hereinafter "1967 Protocol"].

32 See: UN General Assembly, Office of the United Nations High Commissioner for Refugees, Resolution adopted by the General Assembly (9 February 1998) UN Doc. A/RES/52/103.

33 UN High Commissioner for Refugees, 'The 1951 Convention relating to the Status of Refugees: Its Relevance in the Contemporary Context' (UNHCR, 1999) <<http://www.refworld.org/docid/3ae6b3388.html>> accessed 28 December 2016.

34 UN High Commissioner for Refugees, 'Note on International Protection (Submitted by the High Commissioner)' (1967) UN Doc. A/AC.96/377.

35 *ibid.*

international obligations and responsibilities of the United Kingdom in accordance with Article 8(1) of the Treaty of Establishment.³⁶ Additionally, on 16 May 1963, the Republic of Cyprus also affirmed its commitment to the Refugee Convention through a declaration to the UN Secretary General³⁷. Thus, under the provisional Article 4 of the 'constitution' applicable in the northern part of Cyprus, the Refugee Convention is part of the domestic legal framework. On the other hand, the 1967 Protocol of the 1951 Refugee Convention, that lifted the time limit provided in the Convention and extended its application to refugees other than those affected by events at the time of the Second World War, has not been ratified by Turkish Cypriot 'authorities'.

Nevertheless, as a matter of its applicability in the northern part of Cyprus for contemporary situations of displacement in regards to the time limitation, it is important to underline that Palestinian refugees within the scope of Article 1D of the Refugee Convention, whose positions have not been 'definitively settled in accordance with the relevant UN General Assembly resolutions' who have ceased to receive protection or assistance from UNRWA³⁸ without reason, have ipso facto entitlement to the protection offered by the Refugee Convention, based on the inclusion clause in Article 1D(2).³⁹

Paragraph 2 of Article 1D contains an inclusion clause ensuring the ipso facto entitlement to the protection of the Refugee Convention for those refugees who, without having their position definitively settled in accordance with the relevant UN General Assembly resolutions, have ceased to receive protection or assistance from UNRWA for any reason. Hence, the Refugee Convention avoids overlapping competencies between UNRWA and UNHCR, and, in conjunction with UNHCR's Statute, ensures the continuity of protection and assistance to Palestinian refugees as necessary.

D. This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.

Paragraph 2 of Article 1D becomes significant in the Turkish Cypriot context with regards to Palestinian refugees that seek asylum in the northern part of Cyprus. Hence, it follows that Turkish Cypriot 'authorities' have, despite the time limitation, responsibilities under the Refugee Convention towards this group.

The founding principles of the refugee protection regime denoted by the letter and spirit of the Refugee Convention are stated as follows:

36 Treaty Concerning the Establishment of The Republic Of Cyprus (UK-Greece-Turkey) (16 August 1960) 382 UNTS 5476.

37 UN High Commissioner for Refugees, 'State Parties to the 1951 Convention relating to the Status of Refugees and/or its 1967 Protocol' (UNHCR, 2014) <www.refworld.org/docid/51d3dad24.html> accessed 27 September 2016.

38 The United Nations Relief and Works Agency for Palestine Refugees in the Near East.

39 UN High Commissioner for Refugees, 'Revised Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees' (UNHCR, 2009) <www.refworld.org/docid/4add77d42.html> accessed 29 December 2016.

1. The principle of *non-refoulement*: refugees should not be returned to face persecution or the threat of persecution; measures involving the expulsion of refugees shall only be taken in exceptional circumstances when there is a direct impact on national security or public order.
2. The principle of non-discrimination: protection shall be extended to all refugees without discrimination.
3. The principle of non-criminalisation: persons escaping persecution shall not be expected to leave their country and enter another in a regular manner; thus they should not be penalised for having entered into or illegally being in the country where they seek asylum.⁴⁰

The Refugee Convention, together with the 1967 Protocol sets out the customary international law principle of non-refoulement in Article 33 from which no derogation is permitted.

Article 33 prohibition of expulsion or return (“refoulement”)

1. No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

Article 32.2 sets out the conditions under which a refugee may be expelled.⁴¹ However, it does not affect states *non-refoulement* obligations of states under regional and international human rights law, which permit no exceptions.⁴²

It applies to those who are determined to be refugees under Article 1 of the Refugee Convention as well as those who have applied for or have a presumptive or prima facie claim to refugee status⁴³. Under this article, a refugee is a person:

“owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it”

In order to be a beneficiary under the Refugee Convention, the standard of proof of the well-founded test

40 UN High Commissioner for Refugees, ‘The 1951 Convention relating to the Status of Refugees: Its Relevance in the Contemporary Context’ (UNHCR, 1999) <<http://www.refworld.org/docid/3ae6b3388.html>> accessed 28 December 2016, para.4.

41 For more information see. Sir Elihu Lauterpacht and Daniel Bethlehem, ‘The Scope and Content of the Principle of Nonrefoulement: Opinion’ in Erika Feller, Volker Türk and Frances Nicholson (eds), *Refugee Protection in International Law: UNHCR’s Global Consultations on International Protection* (Cambridge University Press, 2003)

42 see Sections 1.3.2, 1.3.3 and 1.3.4.

43 Guy S. Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (3rd ed, Oxford University Press 2006) p.59.

requires 'good reason', 'valid basis' or 'real or reasonable chance or likelihood' of persecution that falls lower than the balance of probabilities tests.⁴⁴

There is an exclusion clause to refugee definition under Article 1(F) and a cessation clause under Article 1(C) of the convention.

Article 1(C) This Convention shall cease to apply to any person falling under the terms of section A if:

- (1) He has voluntarily re-availed himself of the protection of the country of his nationality; or*
- (2) Having lost his nationality, he has voluntarily re-acquired it; or*
- (3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or*
- (4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or*
- (5) He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality; Provided that this paragraph shall not apply to a refugee falling under section A(1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;*
- (6) Being a person who has no nationality he is, because of the circumstances in connection with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence;*

The reasoning behind the cessation clauses is that when it is no longer justified or necessary, international protection shall cease to be provided.⁴⁵ The clauses, interpreted restrictively, do not deal with the cancellation of status.⁴⁶ The burden of providing proof rests with the relevant authorities in the asylum country.⁴⁷

Article 1(F) The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

- (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;*
- (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;*
- (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.*

The reasoning behind exclusion clauses is that perpetrators of extremely grave acts do not deserve

44 Joseph Adjei v. Minister of Employment and Immigration [1989] R.S.C. 1976, C. 52; R v. Secretary of State for the Home Department, Ex parte Sivakumaran and Conjoined Appeals [1988] AC 958, [1988] 1 All ER 193, [1988] 2 WLR 92, [1988] Imm AR 147.

45 UN High Commissioner for Refugees, Handbook on Procedures and Criteria for Determining Refugees Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugee (2011) UN Doc. HCR/1P/4/ENG/REV. 3, [hereinafter "UNHCR Handbook"] para. 115.

46 UNHCR Handbook para. 116 - 117.

47 Guy S. Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (3rd ed, Oxford University Press 2006) p. 87.

refugee protection.⁴⁸ In order for the clauses to apply, individual responsibility to a crime covered by Article 1(F) needs to be established. The burden of proof rests with the authorities undertaking refugee status determination; the applicant should be given the benefit of the doubt, which is the case for all refugee status determination proceedings.⁴⁹ The standard of proof requires clear and credible evidence.⁵⁰ It should also be kept in mind that even after a person is excluded, he/she may still be protected against *refoulement* under other human rights instruments⁵¹ as elaborated in the following paragraphs.

Regarding non-criminalisation, Article 31 of the Refugee Convention provides as follows:

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

The reasoning behind this article was stated to be that “a refugee, whose departure from his country of origin is usually a flight, is rarely in a position to comply with the requirements for legal entry (possession of a national passport and visa) into the country of refuge”.⁵²

Although Article 31 talks about ‘refugees’, it applies to ‘presumptive refugees’⁵³, that is to say, anyone that claims to be in need of international protection. This is because refugee status determination is of a declaratory nature,⁵⁴ and if interpreted otherwise, the provision would be devoid of all effect.⁵⁵ Thus, it also applies

48 UN High Commissioner for Refugees, ‘Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees’ (2003) UN Doc. HCR/GIP/03/05, para 2.

49 *Ibid*, para. 34.

50 *Ibid*, para. 35.

51 The protection under European Convention on Human Rights; International Covenant on Civil and Political Rights; Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment is absolute.

52 Ad Hoc Committee on Statelessness and Related Problems, ‘Proposed Draft Convention Relating to the Status of Refugees’ (1950) UN Doc. E/AC.32.L.38, 15, Annex 1; Annex II, comments p.57.

53 *R. v. Uxbridge Magistrates’ Court and Another, ex parte Adimi* [1999] Imm AR 560.

54 See UNHCR Handbook, para. 28: “A person is a refugee within the meaning of the 1951 Convention as soon as he fulfills the criteria contained in the definition. This would necessarily occur prior to the time at which his refugee status is formally determined. Recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition, but is recognized because he is a refugee.”

55 Guy S. Goodwin-Gill, ‘Article 31 of the 1951 Convention Relating to the Status of Refugees: non-penalization, detention, and protection’ in Erika Feller, Volker Türk and Frances Nicholson (eds), *Refugee Protection in International Law: UNHCR’s Global Consultations on International Protection* (Cambridge University Press, 2003), pp. 185-252, p. 219.

to asylum seekers.

As there are many people in need of international protection coming through Turkey, another element in need of explaining in the Turkish Cypriot context is the term 'directly'. This does not mean that the Article should not apply to those who briefly transited from other countries or those that were not able to find effective protection in the countries from which they transited.⁵⁶ Rather, it only excludes those who found protection and are permanently or temporarily settled in other countries.⁵⁷ Nevertheless, on the availability of effective protection, it is not a decisive argument that UNHCR is operational in the transit countries.⁵⁸ Furthermore, on assessing whether a person transited through or stayed in another country, the intention to reach a particular country of destination, such as for family reunification purposes, is a factor that should be considered.⁵⁹ The requirement of showing 'good cause' for illegal entry or presence depends on the facts of each case. For example, the existence of 'a well-founded fear of persecution' is considered to be in itself as a 'good cause'. Additionally, the existence of close family links in the country of refuge,⁶⁰ impossibility or dangerousness to attain authorized entry or presence can also be amongst factors listed.⁶¹ Similarly, the term 'without delay' also depends on the facts of each case, such as availability of advice.⁶²

The term 'penalties' includes (amongst others) imprisonment, fines, corporal and any other form of punishment as well as detention or custody imposed *in lieu* of punishment.⁶³ As for detention, only when imposed in non-punitive form, is it considered acceptable.⁶⁴

In practice, as elaborated in other parts of this report, the rules in the Refugee Convention are almost never taken into account by the Turkish Cypriot administration in cases that concern detention of persons in need of international protection on grounds of irregular entry or presence or for purposes of deportation.

56 UNHCR, 'Summary Conclusions: Article 31 of the 1951 Convention November 2001' Erika Feller, Volker Türk and Frances Nicholson (eds), *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (Cambridge University Press, 2003), pp. 253-58, p.255.

57 *ibid.*

58 *ibid.*

59 *ibid.*

60 *ibid.*, p.218.

61 Gregor Noll, 'Article 31 (Refugees Unlawfully in the Country of Refuge)' in Andreas Zimmermann (ed), *The 1951 Convention Relating to the Status of the Refugees and its 1967 Protocol: A Commentary* (OUP, 2011) pp.1243-1276 p.1261.

62 UNHCR, 'Summary Conclusions: Article 31 of the 1951 Convention November 2001' Erika Feller, Volker Türk and Frances Nicholson (eds), *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (Cambridge University Press, 2003), pp. 253-58, p. 256.

63 *ibid.* P. 256; Gregor Noll, 'Article 31 (Refugees Unlawfully in the Country of Refuge)' in Andreas Zimmermann (ed), *The 1951 Convention Relating to the Status of the Refugees and its 1967 Protocol: A Commentary* (OUP, 2011) pp.1243-1276 p.1261, 1262.

64 *e.g.* *Attorney-General v. E.* [2000] 3 NZLR 257 (New Zealand), para. 45; UN High Commissioner for Refugees Note on Accession to International Instruments and the Detention of Refugees and Asylum-Seekers' (1986) UN Doc. EC/SCP/44, para. 47: 'Detention should not have the "punitive" character associated with detention or imprisonment in connection with criminal offences and asylum-seekers should, in principle, not be accommodated in prisons together with common criminals'; Gregor Noll, 'Article 31 (Refugees Unlawfully in the Country of Refuge)' in Andreas Zimmermann (ed), *The 1951 Convention Relating to the Status of the Refugees and its 1967 Protocol: A Commentary* (OUP, 2011) p.1243-1276 pp.1261, p.1263

1.3.2 ECHR

The European Convention on Human Rights and its Protocol 1 was ratified by the Republic of Cyprus with the law 39/62. Therefore, it remains part of the domestic legal framework in accordance with the temporary Article 4 of the 'constitution'.⁶⁵ Furthermore, according to the case law of the European Court of Human Rights (ECtHR), Turkey has extra-territorial responsibility in the northern part of Cyprus, making it responsible for the violations of the rights safeguarded in the ECHR in the northern part of the island.⁶⁶

ECHR may potentially address international protection issues in deportation cases under Article 2, 3, exceptionally under article 5, 6, 8 Protocols 6 and 13.

Article 2 protects the right to life. Article 3 prohibits torture, and inhuman or degrading treatment or punishment. Articles 2 and 3 of the ECHR absolutely prohibit any return of an individual who would face a real risk of treatment contrary to either of those provisions.⁶⁷ This is different when compared to the prohibition of *refoulement* to 'persecution' on one of the grounds set out in the Refugee Convention.

The right is absolute and non-derogable.⁶⁸ Inhuman treatment is defined as the minimum as a deliberate treatment that causes severe suffering, mental or physical, that is unjustifiable in a particular case.⁶⁹ Degrading treatment is defined as a treatment that 'humiliates or debases an individual showing a lack of respect for, or diminishing, his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance' and includes actions that are executed as reprimand or penalty irrespective of their lawfulness.⁷⁰ The standard of proof is that, in cases related to Article 2, the prospect of death on return must be a virtual certainty; in cases related to Article 3, substantial grounds must exist for believing that the person to be removed would face a real risk of being subjected to torture or other forms of ill-treatment prohibited by that provision which requires the risk to be foreseeable⁷¹ and real. Even a small risk can be regarded to be real, if the foreseen consequences are severe.⁷² There is a qualitative requirement that the ill-treatment shall attain 'a minimum level of severity'.⁷³ The Court's assessment 'depends on all the circumstances of the case, which includes the nature and the context of treatment or punishment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim'.⁷⁴ In exceptional cases, protection was provided under Article 3 on grounds of

65 'ulusal birlik partisi v. trnc parlamenti, constitutional court, case no 3/2006, Judgment of 21 June 2006'.

66 *Loizidou v. Turkey* (App. No. 15318/89) (1996) 21 EHRR 188.

67 *Soering v. the United Kingdom* (App. No. 14038/88) (1989) 11 EHRR 439.

68 *Chahal v. the United Kingdom [GC]* (App. No. 22414/93) (1996) 23 EHRR 413; *Ramzy v. the Netherlands* (App. No. 25424/05) Judgment of 27 May 2008.

69 *Greek Case*, Judgment of 18 November 1969, Yearbook of the European Convention on Human Rights, No. 12.

70 *Pretty v. the United Kingdom* (App. No. 2346/02) (2000) 35 EHRR 1, paras.52, 313.

71 *Soering v. the United Kingdom* (App. No. 14038/88) (1989) 11 EHRR 439, para. 100.

72 *ibid*, para. 99.

73 *Greek Case*, Judgment of 18 November 1969, Yearbook of the European Convention on Human Rights, No. 12, para. 11; *Ireland v. United Kingdom* (App. No. 5310/71) (1978) 2 EHRR 25, para.163; *Soering v. the United Kingdom* (App. No. 14038/88) (1989) 11 EHRR 439, para.190.

74 *Soering v. the United Kingdom* (App. No. 14038/88) (1989) 11 EHRR 439, para. 100.

ill-health, inability to benefit from medical, social or other forms of assistance or living conditions.⁷⁵

Article 5 protects the right to liberty and security of persons and 6, the right to a fair trial. Articles 5 and 6 may also provide protection in deportation cases,⁷⁶ however, only in very exceptional circumstances.

Article 8 protects the right to private and family life and in cases concerning expulsion of family members or family reunification, it may give a right to enter or prevent removal. For example, if a family cannot establish itself in another country and the interference is not justified, that is to say that when the interference is not in accordance with law or is not pursuing a legitimate aim necessary in a democratic society (it does not respond to a social need and it was disproportionate) then Article 8 may provide protection.⁷⁷

Rules on Article 5 of the ECHR apply to issues pertaining to a deprivation of liberty. According to the case law of ECtHR, the detention of asylum seekers and third-country nationals in 'airport' transit zones amounts to a deprivation of liberty, rejecting the authorities' argument that it does not do so because detention can be avoided by taking a flight out of the country.⁷⁸ Additionally, according to the case law of ECtHR, deprivation of liberty must be a measure of last resort, after exhausting the possibility of less intrusive measures.⁷⁹

Under the ECHR, a deprivation of liberty shall:

1. be justified for a specific purpose defined in Article 5 (1) (a)-(f);
 - after conviction by a competent court;
 - for failure to comply with a court order or a specific obligation prescribed by law;
 - pending trial;
 - in specific situations concerning minors;
 - on public health grounds or due to vagrancy;
 - to prevent an unauthorized entry or to facilitate removal of an alien.
2. be ordered in accordance with a procedure prescribed by law;
3. not be arbitrary.

Detention to facilitate the removal of a foreigner is only lawful when there is such an order and realistic prospect of removal, irrespective of that person's unwillingness to cooperate with the authorities.⁸⁰

Under Article 5 (2), there are procedural safeguards that must be complied with. Authorities have a duty to

75 *D. v. the United Kingdom* (App. No. 30240/96) (1997) 24 EHRR 423; *Sufi and Elmi v. the United Kingdom* (App. Nos. 8319/07 and 11449/07) (2011) 54 EHRR 9 paras. 267- 292; *M.S.S. v. Belgium and Greece [GC]* (App. No. 30696/09) (2011) 53 EHRR 2.

76 *Othman (Abu Qatada) v. the United Kingdom* (App. No. 8139/09) (2012) 55 EHRR 1.

77 *Berrehab v. the Netherlands* (App. No. 10730/84) (1988) 11 EHRR 322; *Moustaquim v. Belgium* (App. No. 12313/86) (1991) 13 EHRR 802; *Sen v. the Netherlands* (App. No. 31465/96) (2001) 36 EHRR 7.

78 *Amuur v. France* (App. No. 19776/92) (1996) 22 EHRR 533, paras. 38-49; *Riad and Idiab v. Belgium* (App. Nos. 29787/03 and 29810/03) Judgment of 24 January 2008; *Nolan and K. v. Russia* (App. No. 2512/04) (2009) 53 EHRR 29 paras. 93-96.

79 *Mikolenko v. Estonia* (App. No. 10664/05) Judgment of 5 January 2006.

80 *Mikolenko v. Estonia* (App. No. 10664/05) Judgment of 5 January 2006; *M. and Others v. Bulgaria* (App. No. 41416/08) Judgment of 26 July 2011, paras. 75 and 76.

inform every detainee of the legal and factual grounds of detention⁸¹ “promptly”⁸² and in simple, non-technical “language which he [or she] understands”, so as to also allow that person to challenge its lawfulness in court⁸³. Under Article 5 (4), there is a right to access a “speedy” review and the remedy should be accessible, sufficiently certain in theory and in practice, and capable of leading to release as well as to the court’s periodic review of the need for continued detention.⁸⁴ The ECtHR, in the cases *MA v. Cyprus*⁸⁵, *K.F v. Cyprus*⁸⁶, *H.S. and others v. Cyprus*⁸⁷ and *A.H and J.K. v. Cyprus*,⁸⁸ decided that neither the recourse under Article 146 of the Constitution nor the Habeas Corpus applications in accordance with Article 155 of the Constitution (at first and second instance) constitute an effective remedy against decisions of detention of asylum seekers and migrants for deportation purposes, since both procedures do not comply with the speediness requirements of Article 5 (4) of the ECHR. These two remedies are very similar to those they may be pursued in the ‘supreme administrative court’ and the ‘supreme court’ in the northern part of Cyprus, as explained above, thus indicating that the requirements under Article 5 (4) of the ECHR are not satisfied.

Finally, Article 5 (5) requires that “everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation”.

Under the ECHR, the place, regime, and conditions of detention may also raise issues under Articles 3, 5 or 8 of the Convention. In these cases, when making an assessment, the ECtHR examines individual features of the conditions as well as their cumulative effect. Among other elements these include: “where the individual is detained (airport, police cell, prison); whether or not other facilities could be used; the size of the containment area; whether it is shared and with how many other people; availability and access to washing and hygiene facilities; ventilation and access to open air; access to the outside world; and whether the detainees suffer from illnesses and have access to medical facilities”.⁸⁹ Special consideration should be given in cases concerning vulnerable groups, such as children, survivors of torture, pregnant women, victims of trafficking, older persons, persons with disabilities, and people with mental health issues, and whether detention facilities are equipped to handle their needs.⁹⁰

81 *Dbouba v. Turkey* (App. No. 15916/09) Judgment of 13 July 2010, paras. 52-54.

82 *Saadi v. the United Kingdom* [GC] (App. No. 13229/03) (2008) 47 EHRR 17.

83 *Nowak v. Ukraine* (App. No. 60846/10) Judgment of 31 March 2011, para. 64.

84 *Z.N.S. v. Turkey* (App. No. 21896/08) Judgment of 19 January 2010; *Dbouba v. Turkey* (App. No. 15916/09) Judgment of 13 July 2010; *S.D. v. Greece* (App. No. 53541/07) Judgment of 11 June 2009.

85 *MA v. Cyprus* (App. No. 14872/10) Judgment of 23 July 2013.

86 *K.F v. Cyprus* (App. No. 41858/10) Judgment of 21 July 2015.

87 *H.S. and others v. Cyprus* (App. No. 41753/10) Judgment of 21 July 2015.

88 *A.H and J.K. v. Cyprus* (App. Nos. 41903/10; 41911/10) Judgment of 21 July 2015.

89 European Agency for Fundamental Rights ‘Handbook on European law relating to asylum, borders and immigration’ (FRA, 2013); *S.D. v. Greece* (App. No. 53541/07) Judgment of 11 June 2009; *M.S.S. v. Belgium and Greece* [GC] (App. No. 30696/09) (2011) 53 EHRR 2.

90 *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium* (App. No. 13178/03) (2006) 46 EHRR 23; *Muskhadzhiyeva and Others v. Belgium* (App. No. 41442/07) Judgment of 19 January 2010.

In *Dougoz*⁹¹, *Peers*⁹², and *S.D. v. Greece*⁹³, the ECtHR stated that due to their experiences while fleeing persecution, detained asylum seekers were particularly vulnerable and their anguish may increase in detention. In *Riad and Idiab v. Belgium*⁹⁴ the ECtHR held that detention for more than ten days in the transit zone amounted to inhuman and degrading treatment, in violation of Article 3, basing its decision on the following facts; that it was a place intended to receive people for extremely short periods of time and may arouse in detainees a feeling of solitude by its very nature; there was no external area for walking or taking physical exercise, no internal catering facilities, and no radio or television to ensure contact with the outside world. In *A.B. and Others v. France*,⁹⁵ administrative detention of an underage child for eighteen days in the context of a deportation procedure against his parents was a violation of Article 3 with regards to the child's age and the duration and conditions of his detention, in addition to violation of Articles 5(1) and 5(4) in respect to the applicant's child, as well as a violation of Article 8 in respect to the child and his parents.

Article 13 provides that 'everyone whose rights and freedoms ... are violated shall have an effective remedy before a national authority', which also has been applied in asylum proceedings. In cases of asylum seekers where a complaint concerns allegations that the person's expulsion would expose him or her to a real risk of treatment contrary to Article 2 or 3 of the Convention, for the purposes of Article 13, the effectiveness of the remedy imperatively requires independent and rigorous⁹⁶ scrutiny by a national authority,⁹⁷ a prompt response,⁹⁸ and having an automatic suspensive effect.⁹⁹ It is important to highlight that a recourse for/by/of the 'supreme administrative court' against a deportation decision in the northern part of Cyprus, in accordance with Article 152 of the 'constitution', is very similar to the proceedings in accordance with Article 146 of the Constitution in the Republic of Cyprus and both lack automatic suspensive effect; ECtHR has previously held that these proceedings in Cyprus cannot be considered as an effective remedy in relation to the complaints under Articles 2 and 3 of the ECHR on these grounds.¹⁰⁰

1.3.3 ICCPR

ICCPR was ratified by the Turkish Cypriot 'authorities' with the 'law' numbered 29/2004, which is part of domes-

91 *R. Dougoz v. Greece* (App. No. 40907/98) Judgment of 6 March 2001.

92 *Peers v. Greece* (App. No. 28524/95) (2001) 33 EHRR 51.

93 *S.D. v. Greece* (App. No. 53541/07) Judgment of 11 June 2009.

94 *Riad and Idiab v. Belgium* (App. Nos. 29787/03 and 29810/03) Judgment of 24 January 2008.

95 *A.B. and Others v. France* (App. No. 11593/12) Judgment of 12 July 2016.

96 *Jabari v. Turkey* (App. No. 40035/98) Judgment of 11 July 2000, para. 50.

97 *Shamayev and Others v. Georgia and Russia* (App. No. 36378/02) Judgment of 12 April 2005 para. 448.

98 *De Souza Ribeiro v. France* [CC] (App. No. 22689/07) 13 December 2012.

99 see, *De Souza Ribeiro v. France* [CC] (App. No. 22689/07) 13 December 2012, para. 82; *IM v. France* (App. No. 9152/09) Judgment of 2 February 2012, para. 58; *Al Hanchi v. Bosnia and Herzegovina* (App. No. 48205/09) Judgment of 15 November 2011, para. 32; *Avud v. Bulgaria* (App. No. 46390/10) Judgment of 11 October 2011, para. 120; *Diallo v. the Czech Republic* (App. No. 20493/07) Judgment of 23 June 2011, para. 74; *M.S.S. v. Belgium and Greece* [CC] (App. No. 30696/09) (2011) 53 EHRR 2, para. 293; *Baysakov and Others v. Ukraine* (App. No. 54131/08) Judgment of 18 February 2010, para. 71; *Abdolkhani and Karimnia v. Turkey* (App. No. 30471/08) Judgment of 22 September 2009, para. 108; *Gebremedhin [Caberamadhien] v. France* (App. No. 25389/05) Judgment of 26 April 2007, para.66.

100 *M.A. v. Cyprus* (App. No. 14872/10) Judgment of 23 July 2013, paras.131-143.

tic legal framework. ICCPR has been interpreted by the UN Human Rights Committee as prohibiting extradition, deportation, expulsion or otherwise the removal a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by Articles 6, the right to life, and 7, the right to be free from torture or other cruel, inhuman or degrading treatment or punishment, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed.¹⁰¹

Regarding Article 7, a list of prohibited acts to distinguish the types of treatment and punishment does not exist,¹⁰² but humiliation and debasement need to exceed a certain level and require other elements beyond mere deprivation of liberty.¹⁰³ Article 7 has also been interpreted to protect procedural rights.¹⁰⁴

Regarding states that have abolished the death penalty, Article 6 is interpreted as prohibiting the return to a country that has not prohibited death penalty, unless they can ensure that the death sentence would not be carried out; regarding states that have not abolished death penalty, Article 6 is interpreted as prohibiting return to a country where Article 6(2) would be violated.¹⁰⁵

The standard of proof is the existence of the real risk of violation of the ICCPR Right, which means that the violation shall be a necessary and foreseeable consequence.¹⁰⁶ It is determined by considering the intent of the country to which an individual is to be sent and the pattern of conduct of that country in similar cases.¹⁰⁷

In an immigration context, Article 9 of the ICCPR necessitates that any deprivation of liberty imposed on must be lawful, necessary, and proportionate.¹⁰⁸

In practice, as elaborated in other parts of this report, the rules in ICCPR are almost never taken into account by the Turkish Cypriot administration in cases that concern the detention of persons in need of international protection on the grounds of irregular entry, presence, or for the purposes of deportation.

101 UN Human Rights Committee, General Comment No. 15: The Position of Aliens under the Covenant (11 April 1986) UN Doc. A/RES/45/158; UN Human Rights Committee, General Comment No. 20: Article 7, Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment (10 March 1992) UN Doc. HRI/ GEN/1/Rev.7, para.9; UN Human Rights Committee, General Comment No. 31: the Nature of the General Legal Obligation on States Parties to the Covenant (26 May 2004) UN. Doc. CCPR/C/21/Rev.1/Add.13, para. 12

102 UN Human Rights Committee, General Comment No. 20: Article 7, Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment (10 March 1992) UN Doc. HRI/ GEN/1/Rev.7, para.4.

103 Vuolanne v. Finland (1989) CCPR/C/35/D/265/1987.

104 Mansour Ahani v. Canada (2004) CCPR/C/80/D/1051/2002.

105 Roger Judge v. Canada (2003) CCPR/C/78/D/829/1998.

106 G.T. v. Australia (1997) CCPR/C/61/D/706/1996, para 8.1; UN Human Rights Committee, General Comment No. 20: Article 7, Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment (10 March 1992) UN Doc. HRI/ GEN/1/Rev.7, para.9.

107 G.T. v. Australia (1997) CCPR/C/61/D/706/1996, para.8.4.

108 A. v. Australia (1997) CCPR/C/59/D/560/1993.

1.3.4 CAT

Article 3 of the CAT prohibits the return of persons to situations of torture; the right under this article is non-derogable and absolute.¹⁰⁹ Nevertheless, it is worth noting the concerns surrounding its absolute nature that is under risk of being undermined in light of recent developments and the acceptance of guarantees against abusive treatment upon return.¹¹⁰

The standard of proof is that when a person is sent to another state, there are 'substantial grounds' for believing that he/she will be subject to torture, which requires the risk of torture to be 'foreseeable, real and potential'.¹¹¹ The committee has drawn a list of situations where it considered relevant in concluding the existence of such risk.¹¹² It has been stressed that the risk does not have to meet the test of being "highly probable" as long as it is beyond mere theory or suspicion¹¹³. Both the individual's profile and the general human rights conditions in the country of origin are taken into account.¹¹⁴

The protection provided does not encompass ill-treatment falling short of torture.¹¹⁵ Torture encompasses only acts that are carried out or acquiesced in by the state or the non-state entity when it occupies and exercises quasi-governmental authority over a territory.¹¹⁶ Pain or suffering arising from lawful sanctions is excepted.¹¹⁷ It has been held that merely having ratified CAT does not render a state safe; actual treatment in that state needs to be considered.¹¹⁸ On the other hand, returning to a country that is not a state party to CAT would de jure bring the person to be expelled outside protection of the CAT and its remedies of control.¹¹⁹

1.3.5 Istanbul Convention¹²⁰

The Istanbul Convention, which became part of the domestic legal framework with the 'law' numbered 58/2011, is a significant regional human rights instrument openly referring in its text to refugee women. The Convention legally upholds important developments in international refugee law developed hitherto in soft law instruments

109 UNHCR EXCOM Conclusion No. 79 (XLVII) 'General' (1996).

110 Ms Hanan Ahmed Fouad Abd El Khalek Attia v. Sweden (2003) CAT/C/31/D/199/2002.

111 EA v. Switzerland (1997) CAT/C/19/D/028/1995; U. S. v. Finland (2003) CAT/C/30/D/197/2002 para 7.8; UN Committee Against Torture, 'General Comment No. 1: Implementation of Article 3 of the Convention in the Context of Article 22 (Refoulement and Communications)' (21 November 1997) UN Doc. A/53/44, annex IX, paras. 52,53.

112 UN Committee Against Torture, 'General Comment No. 1: Implementation of Article 3 of the Convention in the Context of Article 22 (Refoulement and Communications)' (21 November 1997) UN Doc. A/53/44, annex IX.

113 UN Committee Against Torture, 'General Comment No. 1: Implementation of Article 3 of the Convention in the Context of Article 22 (Refoulement and Communications)' (21 November 1997) UN Doc. A/53/44, annex IX, paras.6 and 7.

114 UN High Commissioner for Refugees, 'Protection Mechanisms Outside of the 1951 Convention ("Complementary Protection")' (June 2005), UN Doc. PPLA/2005/02, para. 55.

115 TM. v. Sweden (2003) CAT/C/31/D/228/2003; M.V. v. Netherlands (2003) CAT/C/30/D/201/2002.

116 see S.V. et al. v. Canada (2000) CAT/C/26/D/49/1996; S.S. v. Netherlands (2003) AT/C/30/D/191/2001.

117 PQL v. Canada CAT/C/19/D/57/1996.

118 Avedes Hamayak Korban v. Sweden (1998) CAT/C/21/D/088/1997.

119 Mutombo v. Switzerland (1994) CAT/C/12/D/013/1993.

120 Council of Europe, The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (adopted 11 May 2011, entered into force 1 August 2014) ISBN 978-92-871-7990-6.

and jurisprudence as well as the best practice at a national level, thereby lending them more weight and ensuring their wider application¹²¹.

Its Article 60 calls for the adoption of a legislative framework with an aim to recognise gender-based violence as a ground of persecution within the meaning of Article 1 of the Refugee Convention; requires that the Convention grounds are interpreted in a gender-sensitive manner; and obliges state parties to develop gender-sensitive services and procedures. Article 61 safeguards the application of principle of *non-refoulement* for victims of gender-based violence.

1.3.6 CRC

CRC was ratified by the Turkish Cypriot 'authorities' with the 'law' numbered 6/1996 and became part of the domestic legal framework. The best interest of the child principle enshrined in Article 3 of CRC requires states to consider the best interest of children regarding all actions concerning them. Consequently, the principle is to 'be respected at all stages of displacement cycle'¹²² providing the duty to protect 'children fleeing generalised violence'¹²³ as well as in cases without the existence of a well-founded fear of persecution or prospect of serious harm.¹²⁴ This principle, in practice has been generally used in cases where deportation decisions have been taken against a child's parents¹²⁵ and in cases of unaccompanied children without supportive family networks in their countries of origin.¹²⁶

It has further been asserted that "regardless of the situation, detention of children on the sole basis of their migration status or that of their parents is a violation of children's rights, is never in their best interests and is not justifiable"¹²⁷.

According to Article 37, the requirements protecting the liberty of children, in general, can be listed as follows:

121 UN High Commissioner for Refugees, Parliamentary Assembly, Council of Europe, 'Refugee Women and the Istanbul Convention' (UNHCR, Parliamentary Assembly, CoE 2013).

122 UN Committee on the Rights of the Child, 'General comment No. 6 Treatment of Unaccompanied and Separated Children Outside their Country of Origin' (1 September 2005) UN Doc. CRC/GC/2005/6.

123 Guy S. Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (3rd ed, Oxford University Press 2006) p.324.

124 Guy S. Goodwin-Gill and Agnes Hurwitz 'Memorandum' in Minutes of Evidence Taken before the EU Committee (Sub-Committee E) (10 April 2002) in House of Lords Select Committee on the EU Defining Refugee Status and Those in Need of International Protection (The Stationery Office London 2002) Oral Evidence 2-3, para.19.

125 Guy S. Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (3rd ed, Oxford University Press 2006) p.324.

126 UN High Commissioner for Refugees, 'Protection Mechanisms Outside of the 1951 Convention ("Complementary Protection")' (2005) UN Doc. PPLA/2005/02, para 60.

127 UN Committee on the Rights of the Child, 'Report of the 2012 Day of General Discussion on the Rights of All Children in the Context of International Migration' (28 September 2012) <<http://www.refworld.org/docid/51efb6fa4.html>> [accessed 2 January 2017] para 32, 70, 72; see also: UN Committee on the Rights of the Child, 'General comment No. 6 Treatment of Unaccompanied and Separated Children Outside their Country of Origin' (1 September 2005) UN Doc. CRC/GC/2005/6, para 32.

- detention shall be a measure of last resort
- detention shall be for the shortest appropriate period of time
- detention shall not be unlawful or arbitrary
- children shall have the right to challenge the legality of their detention before a court or another independent body.

The rules in CRC are almost never taken into account when children are detained at 'ports of entry'. In 2015, 68 children were identified in detention cells at 'ports of entry'. 18 of those children were detained for more than a day and out of the 18, one was an unaccompanied child. In 2016, 125 children were identified in detention cells at 'ports of entry'. 21 of those children were detained for more than a day and 3 of them were unaccompanied.

RRA has also observed that in criminal procedures girls below the age of 16, and boys below the age of 12 are placed in the shelter of the child protection agency by the order of the local 'courts' during remand trials. Additionally, when large groups of asylum seekers are arrested, RRA observed that the 'law enforcement authorities' tend to detain the adult men while placing children and women, usually mothers of the children in the group, in temporary accommodation, such as hotels. In 2015, RRA identified one unaccompanied child in need of international protection detained at a 'police' station on grounds of using forged documents; his case was discontinued during the remand stage through the intervention of RRA, when it transpired that he had a pending asylum application in RoC where he was returned. Similarly, in 2016, 2 unaccompanied minors with applications pending in RoC were arrested on grounds of illegal entry. Following an intervention by RRA, they were allowed to access RoC government-controlled areas without formal legal proceedings.

2. Review of Detention

2.1 Standard Procedure at 'Ports of Entry'

A place of detention covers all places where people are deprived of their liberty, including ports of entry.

There are flights between various cities in Turkey and the northern part of the island to Ercan 'airport' on a daily basis, and ferries between Taşucu, Turkey and Kyrenia 'port'. Information provided to RRA Staff during attendances has indicated that people are generally not prevented from boarding flights or ferries in Turkey bound for the northern part of Cyprus regardless of their nationality and/or lack of valid documentation to enter the northern part of Cyprus.

Only the citizens of the Federal Republic of Nigeria and the Republic of Armenia are under obligation to apply in person to a representative office abroad to obtain a visa prior to traveling. Other foreign-country nationals, except for Turkish nationals, whose nationals can travel with ID cards, need to have the following in order to be allowed entry:¹²⁸

- A valid passport
- £85 (Sterling Pounds) or equivalent per day the visitor intends to stay
- Round trip ticket
- Proof of paid and confirmed hotel reservation
- If visiting family or friends, a letter of invitation which provides name, address, phone number and other contact information in full
- If travelling for higher education, an official acceptance letter from the university
- If travelling on a business trip, an official letter of invitation from the company in the northern part of Cyprus
- If travelling for employment, a pre-permit.

Immigration 'police officers' at the 'ports of entry' have the discretion to issue a maximum of 90 days visa to enter and stay, if they see fit. Those who intend to stay longer than the permitted period are required to apply before the visa expiry date to the Immigration Department of the 'police' headquarters for an extension or issuance of residence permit based on their studies or employment.

Those that are refused entry by the immigration 'police officers' are detained until there are spaces available on another flight to go back to the airport where they originally boarded the plane to the northern part of Cyprus.

Regarding Syrians return usually stops in Turkey, while regarding citizens of other countries despite having transited from Turkey, the return may continue to their countries of origin, unless they have a valid permit to enter Turkey. Until the return journey takes place, they are detained at the 'airport'.

These standard procedures are problematic on many grounds. First of all, the rule of *non-refoulement* is never

128 'trnc ministry of foreign affairs', 'Visa Regulations' <<http://mfa.gov.ct.tr/consular-info/visa-regulations>> accessed 9 August 2017.

taken into consideration when making decisions on whether to allow access to territories. The existing policy of blanket refusal of entry, detention, and return without assessing individual cases with broad policy justifications, such as limiting undesired migration, is clearly contrary to international standards.¹²⁹ During weekly monitoring visits and upon individual representations, RRA identified 153 people in 2015, and 227 in 2016 that were denied entry at the 'ports of entry'. Most sought access in order to reach their relatives in the Republic of Cyprus. Many of those, 141 in 2015 and 223 in 2016, were from Syria.

Secondly, when individuals are detained on account of the refusal of their entry with a view to return, no individual assessment with regards to specific vulnerabilities and needs of individuals were made. In 2016, RRA interviewed 49 persons detained at Ercan 'airport'. Amongst them was an elderly woman, 22 minors including 7 unaccompanied minors. 7 of those detained had health problems. In two cases, one of which involved a baby with health problems, the detention period lasted as long as a week. In 2015, RRA interviewed 34 persons at Ercan 'airport'. Amongst them was an elderly woman, 18 minors, including 1 unaccompanied minor. 1 of the detainees had health problems.

2.2 Review of detention Procedures and Access to Alternatives to Detention

According to the obligations of Turkish Cypriot 'authorities' under ECHR, Article 5 and ICCPR, Article 9 on the right to liberty and security of persons, restrictions on liberty and the exceptional use of detention are only permissible when they are legitimate and non-arbitrary. That is to say, such restrictions shall only take place on grounds prescribed by law and in accordance with the procedures authorized by law.

In order to not be arbitrary, there exist additional safeguards to ensure fairness and non-discrimination. First of all, detention must be in pursuit of a legitimate purpose. 'Legitimate purposes' in the context of immigration detention are the same for everyone, including people in need of international protection and other migrants: the existence of the risk of absconding from future legal proceedings or administrative processes or being a danger to their own or public security. If the authorities have a legitimate purpose, then detention must be necessary, reasonable and proportionate under all circumstances of the case. These also apply to all persons subject to detention. Additionally, the detention must be subject to meaningful, enforceable, and independent periodic review.

At the 'ports of entry', detention of persons in need of international protection is not exceptional, but rather automatic. Although they are permissible on grounds prescribed by and in accordance with procedures provided in the domestic legal framework, they are more often than not in violation of international human rights obligations of the Turkish Cypriot Administration and, in particular, the principle of *non-refoulement*,¹³⁰ as international protection needs are not part of the grounds for allowing entry. Thus, people seeking international protection, unless they fit the criteria mentioned in Section 2.1, are not allowed to enter and are returned. More worryingly, RRA's experience shows that a declaration of wish to apply for asylum can be grounds for refusing entry to territories on the basis of the 'authorities' prejudice that the individual requesting this may violate

129 UNHCR, APT, IDC, 2014.

130 As part of customary international law and as enshrined in 1951 Convention and in relevant articles in ECHR and ICCPR.

the military zone, that is to say, cross the Green Line irregularly in order to access the asylum mechanism in the Republic of Cyprus. In fact, on this ground, RRA has observed that specific nationalities, especially those from refugee-producing countries, such as Syria, Iran, Afghanistan and others, are more susceptible to the refusal of entry and detention.

When persons in need of international protection enter the northern part of Cyprus irregularly, they are identified by the 'authorities', usually arrested, initially detained on remand, then brought before the 'criminal court', often resulting in a prison sentence. Subsequent to serving the prison sentence, they are detained at 'police' stations once again, this time with a view to deportation. In such cases, the duration of deprivation of liberty varies from a week up to a couple of months. RRA has observed, especially when groups of Syrians are arrested for irregular entry, that 'authorities' increasingly sought to return these individuals to their last port of travel, usually Turkey, without initiating criminal procedures. RRA has also observed, in cases of large groups that include women and children, the law enforcement tends to detain the adult men while placing children and women, usually mothers of the children in the group, in temporary accommodation, such as hotels, under law enforcement surveillance. In such cases, the duration of detention depends on the time taken to realise return. In cases where people are not admitted back to Turkey, due to visa requirements, the duration of detention pending deportation increases considerably. In such cases, RRA has observed that 'authorities' fail to treat the matters with the urgency required by the conditions of cells at the 'police' and the 'airport'. RRA has recorded some cases where detainees had to find a country that did not have visa requirements and purchased their own tickets in order to not be subjected to prolonged detention.

At the 'ports of entry', detainees do not receive individualized written reasons for the decision to refuse their entry and detain them. The decision that they will not be allowed entry and will be instead detained and returned is communicated orally. In fact, even oral communication is problematic as there are no translators employed neither at the 'airport' nor at the 'port'. Although some 'officers' in both places can speak English Arabic is especially problematic, which is the language spoken by many of the refugees in question. In both places, it has been observed that help is sought from other employees, such as cleaners or fellow passengers. At the 'police' stations and during 'court' proceedings, volunteer translators provide assistance for translation in languages other than English. RRA has received complaints regarding the quality of translation numerous times. In the 'central prison' translators are not available either.

At 'ports of entry', there are no maximum time limits set for detention in law and in individual cases. The actual duration of detention is a few hours at the sea 'port', as detainees are sent back via the ferry with which they arrive. Ferries generally arrive around 8:30 in the morning and return around either 4:00 in the afternoon or 9:00 at night. However, this may extend up to days when there are adverse weather conditions. In such situations, detainees are given the option to buy a plane ticket back to Turkey and return via plane. The actual duration of detention at the 'airport' varies to a greater extent depending on availability of airline tickets on a return flight to the 'airport' at which the detainee boarded, and the duration of administrative paperwork and bureaucratic attempts whenever those are needed. In 2014, RRA identified a woman detained for two and a half weeks, in 2015, an Afghan family amongst which an elderly woman and 4 children were detained for 11 days while in 2016, a family of 3 including a 10-month old sick baby was kept at Ercan 'airport' for 1 week. In neither of the 'ports of entry' were the decisions to detain subject to periodic review, however long

they may be.

Similarly, a maximum period of detention is not set for those detained in 'police' stations with a view to deportation.

2.3 Access to a Lawyer

According to obligations of the Turkish Cypriot 'authorities' under ECHR, Article 6 on the right to a fair trial, all immigration detainees should be provided with access to a suitably-qualified lawyer to advise and assist them in relation to both the detention itself, relevant protection and/or immigration procedures as well as adequate time and facilities for legal consultation and communication. This right is important as lawyers may play an important role in the prevention of torture and in cases of persons in need of international protection for prevention of *refoulement*.¹³¹

At 'ports of entry', access to justice and complaints mechanism is severely limited. Based on the understanding of the 'authorities' that people detained at 'ports of entry' in international zones cannot be considered as detainees, it is believed that they have discretion in allowing lawyers to access them. As a usual practice, only lawyers working for two NGOs that work with refugees are allowed to access the places of detention. In Ercan 'airport', RRA lawyers were only allowed to meet with the detainees during official working hours. Legal consultation and communication usually take place in crowded areas at holding places and in the presence of immigration 'police'.

In the 'central prison', detainees are allowed to have consultations with lawyers during set hours.¹³² Those consultations and communications are allowed to take place in specific rooms in private. RRA has received complaints that the one room available for meeting with lawyers in the female section of the 'central prison' is not enough and is thus causing delays for both lawyers and prisoners to hold their consultations. In 'police' stations, lawyers are allowed to meet with detainees in private during working hours, while each detainee upon arrest is given the right to consult with one lawyer after working hours.

2.4 Arrival and Reception

Arrest and detention can cause excessive anxiety and insecurity for migrants in general and people who flee wars and persecution, in particular, which can aggravate their vulnerability.¹³³ Thus, it is vital to treat detainees with respect, inform them of the full range of their rights, provide them with means to contact family, lawyers, and relevant international agencies and NGOs.¹³⁴ Additionally, it is equally important to properly record detainees in a register, identify their special needs, conduct a medical check carried out by health staff in private, with interpreters in order to reduce vulnerability, upon arrival.¹³⁵

131 UNHCR, APT, IDC, 2014, p.97.

132 'prisons regulation', made under Article 4 of CAP 286 'prison discipline law', Article 83 & 119

133 UNHCR, APT, IDC, 2014 p.96.

134 *ibid*.

135 *ibid*, p.97

At the 'ports of entry', as stated above, detainees are not informed in writing upon arrival of the reasons for their detention. What is more, when informed, it is not always in a language they can understand as there are no translators present at the 'ports'. Neither in 'police' stations nor in the 'central prison' are there translators present. In both places, people are not automatically advised of their right to seek asylum and to protection against *refoulement*. There is a register at both 'ports of entry' which records identity, time, and date of detention. However, it does not include the name and contact details of immediate family members, language(s) spoken and whether a free, qualified, and impartial interpreter was available and used, their stated reason for coming to the territory, whether the detainee has international protection needs or whether the detainee has special needs. Similarly, registers are kept at 'police' stations and the 'central prison' with basic information.

At 'ports of entry', body searches are resorted to only when strictly necessary to ensure the security of staff and the immigration detainees in line with Article 7 of the ICCPR. Although there is no female staff at immigration 'police' to conduct searches on women, when women detainees are present, help is sought from other units with female staff. In 'police' stations and 'prisons', upon reception, bodily searches are conducted and all personal belongings and chattels are taken.

It is imperative that all detainees shall undergo a medical check upon arrival by health staff, in private and interpreters have to be available whenever necessary. In addition to this, immigration detainees' physical and mental health is significant on various grounds. To start with, when they are deprived of their liberty, they become unable to care for their health on their own. Also, it is probable that they have physical and mental health needs due to mistreatment in the past and vulnerabilities in the past and present.¹³⁶ Furthermore, immigration detention itself may have a detrimental impact on their physical and mental health. The 'authorities' shall have a responsibility to care and treat pre-existing conditions as well as being able to afford the same quality and standard as with the people living in the community.¹³⁷ In addition to response care, children have the right to regular check-ups.¹³⁸

Medical checks are conducted at 'ports of entry' only upon request, usually in cases of emergency. At Ercan 'airport', the state medical personnel or a private hospital that has an office at the 'airport' may intervene. At the Kyrenia 'port', emergency health services of the local hospital are called. In both places, the 'police' officer on duty accompanies the detainee if needed to be transferred to a hospital.

According to Article 27 of the 'prison regulation', convicts and detainees have to go through health checks by the prison doctor before they are admitted to the institution¹³⁹. In practice, however, since there is no full-time medical personnel at the 'central prison', convicts and detainees are admitted into the institution without a doctor control and/or are isolated until the doctor visiting the 'central prison' once a week arrives. In 'police' stations, detainees are taken to the emergency service of the 'public hospitals' upon request.

136 'prisons regulation', made under Article 4 of CAP 286 'prison discipline law'. UNHCR, APT, IDC, 2014, p.159.

137 'prisons regulation', made under Article 4 of CAP 286 'prison discipline law' UNHCR, APT, IDC, 2014, p.159

138 *ibid*.

139 'prisons regulation', made under Article 4 of CAP 286 'prison discipline law'.

At 'ports of entry', detainees are not instructed on rights, routines, services, rules, and procedures.¹⁴⁰ Detainees are allowed to keep mobile phones to telephone family and legal counsel. If they do not have mobile phones 'officers' on duty may use discretion to allow them to call local numbers through the landline. However, no steps were identified by RRA in order to allow these conversations to take place in private.

In the 'central prison', according to the regulation, upon reception, a summary of rules on expected conduct from detainees and convicts as well as how they will be treated is read to them and this procedure is repeated every three months¹⁴¹. In practice, the handbook that included such information is no longer distributed. Instead, through forms filled, the detainees can get an understanding of some rules. The detainees have the right to call seven numbers that they have listed from 8 am to 10 pm.

Neither legal professionals, UNHCR, and other appropriately mandated organisations are routinely notified of new arrivals nor are the detainees given information related to access to legal counsel and/or to UNHCR or other appropriately mandated organisations readily available to the detainees. Similarly, detainees are not informed of their right to seek asylum. However, RRA has observed that 'officers' at the 'ports of entry' used their discretion to notify NGOs working with refugees in very vulnerable cases of asylum seekers and when they were unable to deport the persons detained.

2.5 Requests and Complaints & Removal, Deportation Procedures

During detention or deportation procedures, detainees may be very vulnerable to the risk of ill-treatment and torture¹⁴². In order for such procedures to take place in safety and dignity, it is very important that they are managed respectfully, sensitively and humanely by the 'authorities'. Thus, there is a need to give adequate notice of deportation or removal and a reasonable opportunity to make preparations and ensure that such orders to deport and remove do not violate the prohibition on non-*refoulement*.

It is very important that in all places where people are detained, there are internal and external procedures through which detainees can discuss or contest any aspect of conditions in immigration detention. They should be easily accessible, procedurally clear and fair, construed and implemented in a way that respects privacy and confidentiality and is able to produce solid results. Their existence and ways to access them should be made known to detainees.¹⁴³

At Ercan 'airport' when it was asked, orally, about the way to make a complaint about aspects of a stay in immigration detention, it was stated that they can theoretically be made to the general directorate of 'police' or the security sergeant or upon return to Turkish Cypriot representative offices abroad. If a detainee, who was refused entry, resists deportation then the airline companies' personnel may use handcuffs. RRA has received complaints from 3 persons in 2014 and 2 in 2015 that excessive and disproportionate force was used by the 'authorities' in order to realize deportation at Ercan 'airport'.

140 UNHCR, APT, IDC, 2014, p.100.

141 'prisons regulation', made under Article 4 of CAP 286 'prison discipline law', Article 66.

142 UNHCR, APT, IDC, 2014, p.10.

143 UNHCR, APT, IDC, 2014, p.106.

At the Kyrenia 'port', when a complaint on ill-treatment arises, the complaints procedure for any sort of alleged rights violation by an officer is stated to be as follows: the chief administrator is informed, who calls for the 'police' department responsible for taking complaints and making investigations.¹⁴⁴ If a male detainee refuses to board the ship, the 'police officers' take him to the ship and hand the detainees travel and immigration-related documents to the captain of the ship, in the cases of men, and if a female detainee refuses, then female 'police' staff are requested from the district 'police' officer who would take the female to the ship with a mini-bus. In cases of detainees who are deported due to a crime committed then the 'police' crime combatting department is also present and in that case, may use handcuffs. Additionally, at 'ports of entry', the general directorate of 'police' conducts monthly inspections.

In the 'central prison,' there are no set complaints procedures. In practice, detainees are allowed to make complaints to the chief administrator of the 'prison'. When detainees refuse to obey rules, they are transferred to solitary confinement cells.

Procedures for lodging complaints or appealing to 'courts' for judicial review are not made available to detainees. In a case in 2014, RRA Lawyers succeeded in obtaining an interim order from the 'supreme administrative court' regarding the deportation of an asylum seeker that was detained for 9 days at Ercan 'airport'. When the complaints of the applicant regarding the ill-treatment of the 'police' was brought to the attention of the 'court', the 'court' ordered her transfer to the public hospital for a medical check.

'Police officers' in both places carry guns. There are no systems in place to ensure that detainees are assessed by health staff in order to ensure that they are fit to travel, at any stage. This has previously been conducted upon request, in 2015, in cases of pregnant asylum seekers who entered the areas irregularly, upon the request of RRA, their deportation was postponed to a time they were fit to travel again.

As stated above, a recourse to the 'supreme administrative court' or a Habeas Corpus application that may be used to challenge the legality of detention orders, do not comply with the speediness requirements of Article 5 (4) of the ECHR.

2.6 Material Conditions

Depriving persons of their liberty comes with the responsibility to provide for their fundamental needs. Especially when immigration detainees are held, the conditions of detention as well as the environment and the living conditions must be decent and must be respectful of their dignity and non-criminal status. Thus, prisons or jails must be avoided¹⁴⁵ and immigration facilities must be "specifically designed for their purpose".¹⁴⁶ In addition, the design and physical environment of the facilities ought to be in a way to ensure that detainees have adequate privacy.¹⁴⁷

144 'adli şube' in Turkish

145 UNHCR, APT, IDC, 2014, page 8

146 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, '7th General Report' (1997) CPT/Int (97) 10.

147 UNHCR, APT, IDC, 2014, p.131.

As it has great influence on the way people feel, appropriate accommodation, in the sense of its type, size, cleanliness, and time spent in it, is very important for any detainee, including people in need of international protection¹⁴⁸.

In places of detention at 'ports of entry', 'central prison' and 'police' stations, there is segregation within facilities of men and women but not of children from adults. In Ercan 'airport', the room for women is approximately 15 m² whereas the men's room is 25 m². There are 8 beds in the women's room and 14 beds in the men's room. In Kyrenia 'port', the room for women is approximately 16 m² whereas men's room is 12 m². There are 4 beds in each room. The maximum sleeping capacity of both places are not set. At both places, the number of detainees, from time to time, exceed the number of beds. The highest number recorded by RRA at Ercan 'airport', was around 50 persons in the men's room in October 2015, while it was 25 in 2016 in Kyrenia 'port'. The physical capacity of the 'central prison' is 175 persons. In the summer of 2016, it was reported that up to 400 people were imprisoned and 10 to 15 persons inhabited 20 m² rooms.¹⁴⁹

There are 6 iron chairs in the women's room in Kyrenia 'port'. At Ercan 'airport' there are plasma televisions in both rooms. In none of the places do detainees have lockable, individual storage space access, or windows, and thus access to natural light. The detainees have control of the light switches in the rooms. In the 'central prison', there are windows giving access to natural light, except in solitary confinement cells. There are no lockable individual storage spaces, but detainees can purchase plastic storage units from the 'prison' canteen.

In Ercan 'airport', heating and cooling are done by air conditioning. In Kyrenia 'port', there is a central heating system controlled by the harbour administration, which does not always work, but no cooling system. In the 'central prison', there is a central heating system which does not operate on a regular basis and there is no cooling system. Detainees can purchase a ventilating fan from the 'prison' canteen for cooling.

In Ercan 'airport', although the administration claims that sheets are renewed daily and sheets and blankets are laundered by the cleaning company contracted by the 'airport' administration based on 'dirtiness', RRA lawyers have noticed many times during visits that many people stay on mattresses without any sheets on. In Kyrenia 'port' the only bedding available are 10 blankets which are not washed regularly. In the 'central prison' bed sheets are washed twice a month by a private company.

In the context of detention, realizing the right to food becomes an issue of health and safety and respect for the dignity of the human being. Food of nutritional value suitable to age, health, and cultural/religious background, is to be provided free of charge. In order to realize basic sanitation and cleanliness, there shall be a special and appropriate place for the food to be consumed. Additionally, it is also important that detainees are allowed to order food from outside the facility at their own expense. In Kyrenia 'port', water is provided upon request while bottled water can also be bought through the administration. Regarding food, the meals provided at 'police' detention are also given to detainees at the 'port' for free, which is far from satisfactory. Its unit cost is around 7-8 TL which equals to around 2 euros, which includes things like bread, olives, tomatoes

148 UNHCR, APT, IDC, 2014, p.131.

149 'Avukat Özge Uğraşın; "Sayı arttı, cezaevi yetersiz!" *Kıbrıs Postası* (26 August 2016) <http://www.kibrispostasi.com/index.php/cat/35/news/198882/PageName/KIBRIS_HABERLERI> accessed 25 December 2016.

and, from time to time, stew. In Ercan 'airport', the 'authorities' provide meals three times a day for free from a Café at the 'airport' and drinking water is available in the rooms. In both places, detainees can also order food from outside through the 'authorities'. Regarding special nutritional needs, a private company provides food under its social responsibility policy, yet, only for infants. According to RRA's experience, special dietary requirements due to medical needs were not catered for. There exists no medical officer associated with the food chain. At 'police' stations, the food situation is similar to the one at Kyrenia 'port' while in the 'central prison' as well the inadequacy of food to meet daily nutritional needs have been reported.¹⁵⁰ In the 'central prison', food items can be bought from the 'prison' canteen while at 'police' stations the detainees can ask to order, if they have cash, or receive food from outside of detention. In the 'central prison', food is catered by a private company. Provided that a medical doctor approves dietary needs of a detainee, they are catered for. Also drinking water is available in cells.

Personal hygiene can be linked with health, respect for oneself and others, religious practices that have to be respected as well as reducing the possible spread of illness among detainees and staff. With regards to showers and bathing facilities that are essential for proper sanitation, there are separate bathrooms for male and female detainees in Ercan airport while there are none in Kyrenia 'port' where only one toilet is allocated for each room, with soap and toilet paper. In Ercan 'airport', nappies are provided by a private company, free of charge, while this is not the case in Kyrenia 'port'. In the case of washable nappies, additional laundry equipment is not provided. The men's section of the 'central prison' has previously been criticized for access to proper sanitation and shower and bathing facilities. It has been recorded that only 2 showers and toilets exist for around 10 persons and due to inadequate water supply, sometimes there is no water for a whole day. Detainees and convicts can only shower once a week and have problems with washing the dishes and cleaning as well as meeting their other daily needs¹⁵¹. This is in line with RRA's experience which indicates that there is a single toilet for around 10-15 people and one shower for 15-20 people. In the women's section, a shower and toilet are available for around 5 people. No personal hygiene products, such as shampoo or soap, are provided by the administration except for washing powder, which the inmates need to purchase with their own financial means.

As people should not be 'punished' for immigration-related offences, they should be able to wear their own clothes.¹⁵² At the same time, in cases where detainees do not have sufficient suitable clothing that is adequate, readily and safely accessible, clean, suitable to the climate and culturally appropriate, it should be provided on a non-discriminatory basis.¹⁵³ Asylum seekers are allowed to wear their own clothing at all places of detention, except when they are imprisoned based on provisions of the 'aliens and immigration law', 'criminal code' and 'prohibited military zones law' (5/1979) and 'military crimes and punishments law'. In that case, when they are detained on the basis of a guarantee, then they may be required to wear 'prison' clothes, when

150 'Avukat Özge Uğraşın; "Sayı arttı, cezaevi yetersiz!" *Kıbrıs Postası* (26 August 2016) <http://www.kibrispostasi.com/index.php/cat/35/news/198882/PerPageName/KIBRIS_HABERLERI> accessed 25 December 2016.

151 *ibid.*

152 UNHCR, APT, IDC, 2014, p.40.

153 *ibid.*

their own clothes are not sufficient or not suitable for use or kept for the purposes of justice¹⁵⁴; when they are convicts, then they have to wear 'prison' clothes.¹⁵⁵ It is noted that RRA often receives complaints of clothing provided in 'central prison' that they are torn and due to problems in water supply,¹⁵⁶ people have problems in accessing clean clothing; especially as people who are in 'prison' due to offences relating to irregular entry and/or stay, stay in 'prison' often for relatively short periods of time, they are generally provided with clothing that are in worse conditions. There are no laundry facilities in the 'police' stations or 'ports'.

There is a need to ensure that "any interference with individual autonomy is kept to a minimum, and restrictions imposed are only to the extent necessary to maintain security and a well-ordered community life"¹⁵⁷. Regarding the retention of property on admission, at the 'airport', personal belongings of the detainees are recorded in an inventory, the suitcases are kept in the hallway while similarly in Kyrenia 'port', personal items are allowed in the detention cells; at both places, detainees can keep their cash. At the 'central prison', an inventory of cash is kept and convicts and detainees have access to their own cash or can receive cash from outside the place of detention.

2.7 Visits and Communication with the Outside World

It is very important that asylum seekers and refugees in detention keep in contact with a legal adviser, family, friends, support groups, religious representatives, social care workers, and medical practitioners as well as NGOs and UNHCR through visits, over the telephone or internet.¹⁵⁸

In 'ports of entry', access to NGOs working with asylum seekers and refugees are granted. Family members can visit the detainees for short periods of time. Detainees can keep their mobile phones with them through which they can also access the internet. There have been cases where UNHCR officers were allowed to visit and interview people in detention as well as cases where this was denied.

In 'police' stations, RRA observed that there was no opportunity to make regular contact and receive visits from outside. However, from time to time, RRA also observed that 'officers' used their discretion and allowed some family members to visit for short periods of time. Additionally, with the exception of a few cases where 'police officers' exercised discretion, such visits could not take place in private, but rather at the entrance of the detention facility in the presence of 'police officers' and other detainees.

In the 'central prison', inmates can be visited by relatives as well as 3 friends they name which can also be reviewed.¹⁵⁹ NGOs access and identification of asylum seekers and refugees are facilitated by allowing automatic access of NGO lawyers to foreigners to determine their international protection needs.

154 'prisons regulation', made under Article 4 of CAP 286 'prison discipline law', Article 82.

155 *ibid.* Article 82 and Article 96.

156 'Avukat Özge Uğraşın; "Sayı arttı, cezaevi yetersiz!" *Kıbrıs Postası* (26 August 2016) <http://www.kibrispostasi.com/index.php/cat/35/news/198882/PageName/KIBRIS_HABERLERI> accessed 25 December 2016.

157 UNHCR, APT, IDC, 2014, p.141.

158 *ibid.* p.144.

159 'prisons regulation', made under Article 4 of CAP 286 'prison discipline law' Article 119.

3. Recommendations

➤ **Asylum seekers and refugees shall not be sent back to their countries of origin;**

- Detention of persons in need of international protection should be exceptional in all cases, rather than automatic;

➤ **Asylum seekers shall not be criminalised solely on grounds of irregular entry and/or stay.**

- There should be a maximum time limit set for detention in law and in individual cases;
- Detainees should receive in writing the reasons for their deportation and detention, in fact and in law;
- People detained at 'ports of entry' should be entitled to have access to a suitably qualified lawyer to advise and assist them in relation to detention as well as return procedures. They should automatically be informed of their right to legal advice and assistance;
- NGOs that provide free legal assistance to people in need of international protection should be effectively notified as a matter of course;
- Communication with lawyers and NGOs as well as legal consultation should be allowed to take place without delay or censorship, in full confidentiality and adequate time and facilities should be provided;
- Free, qualified and impartial interpreters should be readily available at 'ports of entry';
- Detainees should be informed of the ways to challenge decisions to detain and return them and should have access to an effective remedy;
- Upon arrival, special needs of detainees should be identified and duly recorded following a medical check carried out by health staff, in private with interpreters;
- Registers of people detained at 'ports of entry' should be more detailed and should definitely include name and contact details of immediate family members; language(s) spoken and whether a free, qualified and impartial interpreter was available and used; stated reason for being in or coming to the territory; whether the detainee wants to apply for international protection/asylum; whether the detainee has special needs;

➤ Legal counsel, UNHCR and/or other appropriately mandated organisations should be promptly notified of detention of persons that claim to be in need of international protection;

➤ At the 'ports of entry', detainees should have access to effective complaint mechanisms without censorship and easily-accessible internal requests and complaints procedures established, as well as external procedures; for responding to current allegations of torture or ill-treatment a protocol must be adopted;

➤ In all places of detention, CPT standards must be followed and, in particular, the number of detainees shall not exceed the authorized maximum sleeping capacity according to the dimensions of the cell and should not, in any case, be higher than the number of beds; the detention place must be well maintained, safe, clean and with adequate furniture, clean bedding as well as adequate and safe heating and/or cooling and ventilation; the room(s) have natural light and allow circulation of fresh air; the detainees should have control of the light switches; couple and family accommodation should be provided, which should also be safe for children;

➤ In the 'central prisons' and 'police' stations, immigration detainees should not be co-mingled with those detained under the criminal law provisions;

➤ 'Authorities' should ensure that nutritional value of food provided in detention is adequate and suitable for age, health, and cultural/religious background and special dietary requirements (vegetarian, religious, medical);

➤ All detainees should be granted access to bathing or showering facilities at a temperature suitable to the climate, as frequently as necessary for general hygiene according to the season and geographical region. Special attention must be paid to the specific needs of women, small children, and babies;

➤ In all places of detention, the 'authorities' shall ensure that disposable nappies are available free of charge;

➤ Immigration detainees should be able to wear their own clothes regardless of their place of detention. All detainees, whenever and wherever needed, should be provided with suitable clothing on arrival and should have ready access to laundry facilities or services;

➤ Health screening should be provided on arrival by a suitably qualified medical doctor in private in all places of detention with translators whenever needed that is also sensitive to the needs and vulnerabilities;

➤ All detainees should have full and equal access to free health care services.

Bibliography

Primary Sources

International and Regional Treaties

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984 entered into force 26 June 1987) 1465 UNTS 85.

Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.

Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137

Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14 (adopted 4 November 1950, entered into force 3 September 1953) ETS 5.

Council of Europe, Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (adopted 11 May 2011, entered into force 1 August 2014), ISBN 978-92-871-7990-6.

International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

Protocol Relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267.

Treaty Concerning the Establishment of The Republic Of Cyprus (UK.-Greece-Turkey) (16 August 1960) 382 UNTS 5476.

Domestic Legislation

'aliens and immigration law, CAP 105 (1959 edition) adopted on 19 June 1952, as amended by laws 21/1982; 44/1989, 32/2004, 38/2006, 28/2007; 50/2007; 31/2008; 55/2011; 62/2014 and 44/2016'.

'courts law, Law No. 9/76 official gazette [Resmi Gazete = R.C.], 18 April 1976 No. 25, enacted: 17 March 1976, as amended by Laws No. 3/1978, 10/1978, 6/1980, 23/1980, 19/1981, 18/1982, 34/1982, 56/1982, 21/1983, 7/1984, 20/1984, 4/1985,7/1986, 24/1986, 2/1988, 5/1988, 15/1988, 67/1991, 8/1995, 15/1995, 38/1995, 6/1997, 42/2000, 2/2002; 43/2005; 51/2008, 15/2009, 17/2013 and 54/2017'.

'criminal code, CAP 154 (1959 edition) adopted on 1 January 1929, as amended by laws 3/1962, 43/1963, 15/1972, 20/1974, 31/1975, 6/1983, 22/1989, 64/1989, 11/1997, 20/2004,41/2007; 20/2014 and 45/2014'.

'military crimes and punishments law, No. 29/1983, enacted: 19 April 1983, as amended by Laws No. 34/1995; 50/2006 and. 8/2009'.

'prohibited military zones law, No. 5/1979, enacted: 17 May 1979'.

'prisons regulation, made under Article 4 of CAP 286 'prison discipline law'.

'turkish republic of northern cyprus', 'constitution', 'official gazette' [Resmi Gazete = R.G.], 7 May 1985, enacted: 5 May 1985'.

UN Documents and other Soft Law Instruments

Ad Hoc Committee on Statelessness and Related Problems, 'Proposed Draft Convention Relating to the Status of Refugees' (1950) UN Doc. E/AC.32.L38, 15.

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, '7th General Report' (1997) CPT/Int (97) 10.

UN Committee against Torture, 'General Comment No. 1: Implementation of Article 3 of the Convention in the Context of Article 22 (Refoulement and Communications)' (21 November 1997) UN Doc. A/53/44.

UN Committee on the Rights of the Child, 'General comment No. 6 Treatment of Unaccompanied and Separated Children Outside their Country of Origin' (1 September 2005) UN Doc. CRC/GC/2005/6.

UN Committee on the Rights of the Child, Report of the 2012 Day of General Discussion on the Rights of All Children in the Context of International Migration (28 September 2012) <<http://www.refworld.org/docid/51efb6fa4.html>> [accessed 2 January 2017].

UN General Assembly, Office of the United Nations High Commissioner for Refugees, Resolution adopted by the General Assembly (9 February 1998) UN Doc. A/RES/52/103.

UN High Commissioner for Refugees Note on Accession to International Instruments and the Detention of Refugees and Asylum-Seekers' (1986) UN Doc. EC/SCP/44.

UN High Commissioner for Refugees, 'Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees' (2003) UN Doc. HCR/GIP/03/05.

UN High Commissioner for Refugees, 'Note on International Protection (Submitted by the High Commissioner)' (1967) UN Doc. A/AC.96/377.

UN High Commissioner for Refugees, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees (2011) UN Doc. HCR/1P/4/ENG/REV. 3.

UN High Commissioner for Refugees, 'Protection Mechanisms Outside of the 1951 Convention ("Complementary Protection")' (2005) UN Doc. PPLA/2005/02.

UN Human Rights Committee, General Comment No. 15: The Position of Aliens under the Covenant (11 April 1986) UN Doc. A/RES/45/158.

UN Human Rights Committee, General Comment No. 20: Article 7, Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment (10 March 1992) UN Doc. HRI/ GEN/1/Rev.7.

UN Human Rights Committee, General Comment No. 31: the Nature of the General Legal Obligation on States Parties to the Covenant (26 May 2004) UN. Doc. CCPR/C/21/Rev.1/Add.13

UNHCR EXCOM Conclusion No. 79 (XLVII) 'General' (1996).

Case Law

Human Rights Committee

A. v. Australia (1997) CCPR/C/59/D/560/1993

Charles Chitat Ng v. Canada (1994) CCPR/C/49/D/469/1991.

G.T. v. Australia (1997) CCPR/C/61/D/706/1996,

Vuolanne v. Finland (1989) CCPR/C/35/D/265/1987

Mansour Ahani v. Canada (2004) CCPR/C/80/D/1051/2002

Roger Judge v. Canada (2003) CCPR/C/78/D/829/1998

Committee against Torture

Avedes Hamayak Korban v. Sweden (1998) CAT/C/21/D/088/1997

EA v. Switzerland (1997) CAT/C/19/D/028/1995

M.V. v. Netherlands (2003) CAT/C/30/D/201/2002

Ms Hanan Ahmed Fouad Abd El Khalek Attia v. Sweden (2003) CAT/C/31/D/199/2002

Mutombo v. Switzerland (1994) CAT/C/12/D/013/1993

PQL v. Canada CAT/C/19/D/57/1996

S.S. v. Netherlands (2003) CAT/C/30/D/191/2001

S.V. et al. v. Canada (2000) CAT/C/26/D/49/1996

T.M. v. Sweden (2003) CAT/C/31/D/228/2003

U. S. v. Finland (2003) CAT/C/30/D/197/2002

European Court of Human Rights

A.B. and Others v. France (App. No. 11593/12) Judgment of 12 July 2016.

A.B. and Others v. France (App. No. 11593/12) Judgment of 12 July 2016.

A.H and J.K. v. Cyprus (App. Nos. 41903/10; 41911/10) Judgment of 21 July 2015.

Abdolkhani and Karimnia v. Turkey (App. No 30471/08) Judgment of 22 September 2009.

Al Hanchi v. Bosnia and Herzegovina (App. No 48205/09) Judgment of 15 November 2011.

Amuur v. France (App. No. 19776/92) (1996) 22 EHRR 533.

Auad v. Bulgaria (App. No. 46390/10) Judgment of 11 October 2011.

Baysakov and Others v. Ukraine (App. No. 54131/08) Judgment of 18 February 2010.

Berrehab v. the Netherlands (App. No. 10730/84) (1988) 11 EHRR 322.

Chahal v. the United Kingdom [GC] (App. No. 22414/93) (1996) 23 EHRR 413.

D. v. the United Kingdom (App. No. 30240/96) (1997) 24 EHRR 423.

Dbouba v. Turkey (App. No. 15916/09) Judgment of 13 July 2010.

De Souza Ribeiro v. France [GC] (App. No. 22689/07) 13 December 2012.

Diallo v. the Czech Republic (App. No. 20493/07) Judgment of 23 June 2011.

Gebremedhin [Caberamadhien] v. France (App. No. 25389/05) Judgment of 26 April 2007.

Greek Case, Judgement of 18 November 1969, Yearbook of the European Convention on Human Rights, No. 12.

H.S. and others v. Cyprus (App. No. 41753/10) Judgment of 21 July 2015.

I.M. v. France (App. No. 9152/09) Judgment of 2 February 2012.

Ireland v. United Kingdom (App. No. 5310/71) (1978) 2 EHRR 25.

Jabari v. Turkey (App. No. 40035/98) Judgment of 11 July 2000.

K.F. v. Cyprus (App. No. 41858/10) Judgment of 21 July 2015.

Loizidou v. Turkey (App. No. 15318/89) (1996) 21 EHRR 188.

M. and Others v. Bulgaria (App. No. 41416/08) Judgment of 26 July 2011.

MA. v. Cyprus (App. No. 14872/10) Judgment of 23 July 2013.

M.S. v. the United Kingdom (App. No. 24527/08) 2012 55 EHRR 23.

M.S.S. v. Belgium and Greece [GC] (App. No. 30696/09) (2011) 53 EHRR 2.

Mikolenko v. Estonia (App. No. 10664/05) Judgment of 5 January 2006.

Moustaquim v. Belgium (App. No. 12313/86) (1991) 13 EHRR 802.

Mubilanzila Mayeka and Kaniki Mitunga v. Belgium (App. No. 13178/03) (2006) 46 EHRR 23.

Muskhadzhiyeva and Others v. Belgium (App. No. 41442/07) Judgment of 19 January 2010.

Nolan and K. v. Russia (App. No. 2512/04) (2009) 53 EHRR 29.

Nowak v. Ukraine (App. No. 60846/10) Judgment of 31 March 2011.

Othman (Abu Qatada) v. the United Kingdom (App. No. 8139/09) (2012) 55 EHRR 1.

Peers v. Greece (App. No. 28524/95) (2001) 33 EHRR 51.

Pretty v. the United Kingdom (App. No. 2346/02) (2000) 35 EHRR 1

Price v. the United Kingdom (App. No. 33394/96) (2001) 34 EHRR 1285.

R, Dougoz v. Greece (App. No. 40907/98) Judgment of 6 March 2001.

Ramzy v. the Netherlands (App. No. 25424/05) Judgment of 27 May 2008.

Riad and Idiab v. Belgium (App. Nos. 29787/03 and 29810/03) Judgment of 24 January 2008.

S.D. v. Greece (App. No. 53541/07) Judgment of 11 June 2009.

Saadi v. the United Kingdom [GC] (App. No. 13229/03) (2008) 47 EHRR 17.

Sen v. the Netherlands (App. No. 31465/96) (2001) 36 EHRR 7.

Shamayev and Others v. Georgia and Russia (App. No. 36378/02) Judgment of 12 April 2005.

Soering v. the United Kingdom (App. No. 14038/88) (1989) 11 EHRR 439.

Sufi and Elmi v. the United Kingdom (App. Nos. 8319/07 and 11449/07) (2011) 54 EHRR 9. Domestic Courts

Z.N.S. v. Turkey (App. No. 21896/08) Judgment of 19 January 2010.

Canada

Joseph Adjei v. Minister of Employment and Immigration [1989] R.S.C. 1976, C. 52.

New Zealand

Attorney-General v. E. [2000] 3 NZLR 257

In the northern part of Cyprus

'cemal kurtçebe v. directorate of the central prison through the attorney general, supreme court, case no:3/1991, Judgment of 1 October 1991'

'salim elibol v. trnc through trnc council of ministers and others, supreme administrative court, case no. 15/2006, Judgment of 18 March 2008'

'ulusal birlik partisi v. trnc parliament, constitutional court, case no 3/2006, Judgment of 21 June 2006.'

Republic of Cyprus

Attorney General v Afames (1961) 1 CLR 121.

Essa Murad Khlaief v Republic (2003) CLR 1521.

United Kingdom

R v. Secretary of State for the Home Department, Ex parte Sivakumaran and Conjoined Appeals [1988] AC 958, [1988] 1 All ER 193, [1988] 2 WLR 92, [1988] Imm AR 147.

R. v. Uxbridge Magistrates' Court and Another, ex parte Adimi [1999] Imm AR 560.

Secondary Sources

Books/ Journal Articles/ Reports

'Summary Conclusions: Article 31 of the 1951 Convention November 2001' in Feller, E. Türk V. and Nicholson F. (eds), *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (Cambridge University Press, 2003).

European Agency for Fundamental Rights 'Handbook on European law relating to asylum, borders and immigration' (FRA, 2013).

Goodwin-Gill, G. S. and Hurwitz, A. 'Memorandum' in Minutes of Evidence Taken before the EU Committee (Sub-Committee E) (10 April 2002) in House of Lords Select Committee on the EU Defining Refugee Status and Those in Need of International Protection (The Stationery Office London 2002) Oral Evidence 2-3.

Goodwin-Gill, G. S. and McAdam, J. *The Refugee in International Law* (3rd edn, Oxford University Press 2006).

Goodwin-Gill, G. S.'Article 31 of the 1951 Convention Relating to the Status of Refugees: non-penalization, detention, and protection' in Feller, E. Türk, V. and Nicholson F. (eds), *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (Cambridge University Press, 2003).

Gregor, N 'Article 31 (Refugees Unlawfully in the Country of Refuge)' in Zimmermann, A. (ed), *The 1951 Convention Relating to the Status of the Refugees and its 1967 Protocol: A Commentary* (OUP, 2011).

Lauterpacht, E. and Bethlehem, D. 'The Scope and Content of the Principle of Nonrefoulement: Opinion' in Feller, E. Türk, V. and Nicholson, F. (eds), *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (Cambridge University Press, 2003).

'trnc ministry of foreign affairs', 'Visa Regulations' <<http://mfa.gov.ct.tr/consular-info/visa-regulations>> accessed 9 August 2017

UN High Commissioner for Refugees, 'Revised Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees' (UNHCR, 2009) <www.refworld.org/docid/4add77d42.html> accessed 29 December 2016.

UN High Commissioner for Refugees, 'State Parties to the 1951 Convention relating to the Status of Refugees and/or its 1967 Protocol' (UNHCR, 2014) <www.refworld.org/docid/51d3dad24.html> accessed 27 September 2016.

UN High Commissioner for Refugees, 'The 1951 Convention relating to the Status of Refugees: Its Relevance in the Contemporary Context' (UNHCR, 1999) <<http://www.refworld.org/docid/3ae6b3388.html>> accessed

28 December 2016.

UN High Commissioner for Refugees, Association for the Prevention of Torture, the International Detention Coalition, 'Monitoring Immigration Detention: Practical Manual' (UNHCR, APT, IDC, 2014).

UN High Commissioner for Refugees, Parliamentary Assembly, Council of Europe, 'Refugee Women and the Istanbul Convention' (UNHCR, Parliamentary Assembly, CoE 2013).

UNHCR Cyprus 'The UN Refugee Agency Cyprus' (UNHCR Cyprus, 2014).

News Sources

'Avukat Özge Uğraşın; "Sayı arttı, cezaevi yetersiz!" *Kıbrıs Postası* (26 August 2016) <http://www.kibrispostasi.com/index.php/cat/35/news/198882/PageName/KIBRIS_HABERLERI> accessed 25 December 2016

